

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION OF CARDINAL UTILITIES, INC.;	)	
LARRAINE P. KIMBRELL; AND STEVE POPE	)	
	)	
_____	)	CASE NO.
	)	90-189
ALLEGED VIOLATIONS OF KRS CHAPTER 278	)	

IN RE:

CARDINAL UTILITIES, INC.  
PETITION OF NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET

O R D E R

On July 9, 1990, the Commission issued a show cause Order against Cardinal Utilities, Inc. ("Cardinal"), Larraine P. Kimbrell, and Steve Pope. The Commission's show cause Order alleged that Cardinal had violated Commission regulations by failing to maintain and operate its six sewage treatment facilities in accordance with good accepted engineering practice, and that Cardinal had charged unauthorized rates for service to Southern Pride Truck Stop ("Southern Pride"). The Order further alleged that Larraine P. Kimbrell and Steve Pope, individually, had violated KRS 278.020(4) and (5) by attempting to transfer ownership of Cardinal from Ms. Kimbrell to Mr. Pope without Commission approval.

On August 13, 1990, the Natural Resources and Environmental Protection Cabinet ("Cabinet") filed a petition in this proceeding requesting the Commission to find Cardinal in default of the

statutes and regulations of the Commission and of the Cabinet. The Cabinet had filed an enforcement action against Cardinal, Larraine P. Kimbrell, and Steve Pope on January 11, 1989 in Franklin Circuit Court,<sup>1</sup> and orders had been entered in that action requiring the defendants to bring the plants into compliance with Cabinet statutes and regulations or to face daily fines. In its petition filed in the instant proceeding, the Cabinet requested the Commission to find Cardinal, Larraine P. Kimbrell, and Steve Pope in default of the terms of Irrevocable Letter of Credit No. 162, which was issued in favor of the Commission by Peoples First National Bank and Trust Company in Paducah, Kentucky on January 20, 1986. The Cabinet requested the Commission to make demand upon the letter of credit in its aggregate amount of \$10,000, for or on behalf of the Cabinet, said funds to be placed in the control of a receiver to disburse for repair and maintenance of the six systems. The Cabinet's petition was consolidated with this proceeding by Order of the Commission dated August 15, 1990.

Following a hearing held at the Commission on September 12, 1990, the Commission on November 12, 1990 issued an Order finding Cardinal, Larraine P. Kimbrell, and Steve Pope in violation of multiple Commission statutes and regulations. The Commission ordered Cardinal to pay a penalty in the amount of \$15,000 for violation of 807 KAR 5:071, Section 7, and a penalty of \$2500 for charging unauthorized rates to Southern Pride in violation of KRS

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<sup>1</sup> Civil Action No. 89-CI-0046.

278.160. In addition, Cardinal was ordered to file with the Commission a report evidencing the total amount charged and collected from Southern Pride for sewer service from September 29, 1987 to the present, and to refund that amount to Southern Pride within 30 days of the date of the Order. Larraine P. Kimbrell and Steve Pope, individually, were ordered to pay to the Commission a penalty of \$2500 each for transferring ownership and control of Cardinal without Commission authorization, in violation of KRS 278.020(4) and (5). The Order further found Cardinal in violation of the terms of Irrevocable Letter of Credit No. 162.

By letter dated November 15, 1990, the Commission notified Cardinal, Larraine P. Kimbrell, Steve Pope, and Peoples First National Bank and Trust Company that the Commission had found Cardinal in default of the terms of Irrevocable Letter of Credit No. 162 and that it intended to invoke the \$10,000 letter of credit unless all violations of Commission and Cabinet statutes and regulations found in the Commission's November 12, 1990 Order were remedied within 30 days. On January 8, 1991, the Commission issued an Order finding a failure on the part of Cardinal to remedy its default of the terms of Irrevocable Letter of Credit No. 162 within the specified 30 days. The Order invoked the terms of Irrevocable Letter of Credit No. 162, and by letter of January 8, 1991 to Peoples First National Bank and Trust Company, the Commission demanded payment under the terms of the letter of credit in the amount of \$10,000. Peoples First National Bank and Trust Company complied with the terms of Irrevocable Letter of Credit No. 162 and, on January 10, 1991, the Commission received a

check for \$10,000 made to the order of the Kentucky Public Service Commission.

In the Commission's January 8, 1991 Order, the Commission also ordered Larraine P. Kimbrell and Steve Pope to appear at a hearing scheduled for February 7, 1991 and be prepared to show cause why they should not be penalized, individually, for willful violation of Commission regulation 807 KAR 5:071, Section 7, and KRS 278.160, and why they should not be required to refund all unauthorized rates collected from Southern Pride. The hearing scheduled for February 7, 1991 was thereafter rescheduled to February 28, 1991, and subsequently, by Order of February 22, 1991, postponed indefinitely due to events taking place in the action in Franklin Circuit Court.

On January 18, 1991, the Commission moved the Franklin Circuit Court for permission to intervene as a plaintiff in the Cabinet's proceeding against Cardinal, Larraine P. Kimbrell, and Steve Pope. The Commission also tendered to the court a motion to appoint a receiver, requesting that the \$10,000 check obtained through Irrevocable Letter of Credit No. 162 be deposited with the receiver to be used for the purpose of bringing the six Cardinal facilities in compliance with Commission and Cabinet statutes and regulations. The Franklin Circuit Court granted the Commission's motion to intervene by Order entered January 24, 1991, but declined to appoint a receiver at that time. On February 6, 1991, after being advised that the parties had negotiated a settlement in the action and that the settlement would be reduced into a

formal written agreement, the court continued the action generally pending the reduction of the settlement into a formal agreement.

On March 27, 1991, the parties to the Franklin Circuit Court action entered into an Agreed Settlement Order, and the court entered an Order dismissing the action with prejudice. In the Agreed Settlement Order, which is attached hereto as Exhibit A and incorporated by reference herein, Cardinal, Larraine P. Kimbrell, and Steve Pope agreed to transfer the six wastewater treatment facilities to the Purchase Public Service Corporation, a Kentucky nonprofit corporation which is a subsidiary of the Purchase Area Development District. The Commission agreed to move the Franklin Circuit Court to appoint the Purchase Public Service Corporation as a receiver to disburse the \$10,000 check held by the Commission, the money to be used to bring the six facilities into compliance with Commission and Cabinet statutes and regulations. The Commission also agreed to forego the collection of penalties previously assessed in the instant proceeding against Cardinal, Larraine P. Kimbrell, and Steve Pope, said agreement conditioned upon the transfer of the facilities to the Purchase Public Service Corporation. The deeds and other documents accomplishing the transfer were executed on March 27, 1991, and Purchase Public Service Corporation now owns the former Cardinal facilities.

As previously discussed, the Commission in January of 1991 moved the Franklin Circuit Court for appointment of a receiver to disburse the \$10,000 check. That motion was not ruled upon by the court, and the circuit court action has been dismissed by order of the court and is no longer a docketed case.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that performance of the actions mandated in Ordering Paragraphs 1 through 5 below will satisfy the terms of the Agreed Settlement Order.

IT IS THEREFORE ORDERED that:

1. All penalties assessed by the Commission against Cardinal, Lorraine P. Kimbrell, and Steve Pope in the Commission's Order of November 12, 1990 are hereby waived and voided.

2. The performance by Cardinal, Lorraine P. Kimbrell, and Steve Pope of all other actions mandated pursuant to any Order issued by the Commission in this proceeding is hereby waived and voided.

3. Within 10 days of date of entry of this Order, the Commission shall deliver to the Purchase Public Service Corporation the \$10,000 received under the terms of Irrevocable Letter of Credit No. 162. Within 10 days of receipt of said check, the Purchase Public Service Corporation shall file acknowledgment of receipt thereof with the Commission.

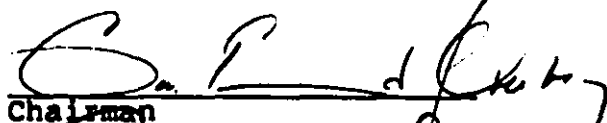
4. Purchase Public Service Corporation shall act as a receiver to disburse the \$10,000 for the purpose of bringing the six sewage treatment facilities into compliance with Commission and Cabinet statutes and regulations. The Purchase Public Service Corporation shall file quarterly statements with the Commission beginning with the quarter ending June 30, 1991. Said statements shall be mailed to the office of the Executive Director, Public Service Commission, 730 Schenkel Lane, Frankfort, Kentucky 40601, shall be filed within 30 days of the end of each quarter, and

shall continue until the \$10,000 is fully expended. Said statements shall contain a detailed accounting of all disbursements made during the reporting period, including a description of the item or service purchased, the date on which the disbursement was made, beginning and ending balance, and any other information which the Commission may reasonably require.

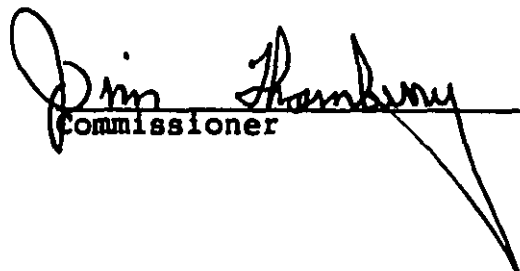
5. This proceeding is hereby dismissed with prejudice.

Done at Frankfort, Kentucky, this 10th day of May, 1991.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION II

89-CI-0046

COMMONWEALTH OF KENTUCKY,  
NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET

PLAINTIFF

PUBLIC SERVICE COMMISSION  
OF KENTUCKY

INTERVENING PLAINTIFF

v. ORDER OF DISMISSAL

CARDINAL UTILITIES, INC.  
LORRAIN P. KIMBRELL  
STEVE POPE  
JIFFY MART FINE FOODS, INC.  
d/b/a SOUTHERN PRIDE TRUCK STOP

DEFENDANTS

The parties having entered an Agreed  
Settlement Order, and the Court being otherwise sufficiently  
advised, this action is HEREBY DISMISSED WITH PREJUDICE all  
parties bearing their respective costs.

SO ORDERED THIS 27 day of MARCH, 1991.


  
JUDGE, FRANKLIN CIRCUIT COURT

EXHIBIT A



COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
CIVIL ACTION NO. 89-CY-0046  
DIVISION NO. II

COMMONWEALTH OF KENTUCKY,  
NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET

PLAINTIFF

PUBLIC SERVICE COMMISSION OF KENTUCKY

INTERVENING PLAINTIFF

VS.

AGREED SETTLEMENT ORDER

CARDINAL UTILITIES, INC.  
LORRAIN P. KIMBRELL  
STEVE POPE  
JIFFY MART FINE FOODS, INC.  
d/b/a SOUTHERN PRIDE TRUCK STOP

DEFENDANTS

Comes the parties to this action, Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Public Service Commission of Kentucky, Cardinal Utilities, Inc., Lorrain P. Kimbrell, Steve Pope, and Jiffy Mart Fine Foods, Inc., d/b/a Southern Pride Truck Stop, and agrees as follows with the Purchase Area Development District:

Defendants, Cardinal Utilities, Inc., Lorraine P. Kimbrell and Steve Pope, own and operate six (6) wastewater treatment facilities in Graves, Marshall and McCracken Counties. The wastewater treatment facilities are Fieldmont, Green Acres and Blandville West, located in McCracken County; Golden Acres and Gateway, located in Marshall County; and Holifield Heights in Graves County.

Purchase Public Service Corporation, a Kentucky non-profit corporation formed in an effort to promote growth in the

Ballard, Carlisle, Gateway, Filson, Acres, Green Acres and Holifield Heights and to make provision for the same wastewater treatment facilities to be constructed and installed on sewage systems for the defendant defendant utilities. The Lorraine P. Kimbrell and Steve Pope, under the conditions set forth in the following paragraphs of this settlement agreement:

(1) Defendants, Cardinal Utilities, Inc., Lorraine P. Kimbrell and Steve Pope, agree to transfer by deed all right title and interest in the above-mentioned six (6) wastewater treatment facilities to the Purchase Public Service Corporation. The Defendants, Cardinal Utilities, Inc., Lorraine P. Kimbrell and Steve Pope shall execute all deeds transferring the Fieldmont, Green Acres, Blandville West, Golden Acres, Gateway and Holifield Heights wastewater treatment facilities and collection lines free and clear of all liens and encumbrances to the Purchase Public Service Corporation.

(2) Defendants, Cardinal Utilities, Inc., Lorraine P. Kimbrell, and Steve Pope, shall transfer all of the rights, title and interest to two (2) sewage treatment tanks located above ground at the Gateway plant in Marshall County to the Purchase Public Service Corporation free and clear of all debts, liens and encumbrances.

(3) Defendants, Cardinal Utilities, Inc., Lorraine P. Kimbrell and Steve Pope, shall pay all electric bills, water

bills and all other liens or encumbrances for repairs, maintenance and equipment at the six (6) wastewater treatment facilities as of the date that deeds are executed to the Purchase Public Service Corporation.

(4) Defendants, Cardinal Utilities, Inc., Lorraine P. Kimbrell and Steve Pope shall deliver to the Purchase Public Service Corporation all accounts receivable, <sup>as of April 15, 1991,</sup> all records of accounts, books, and customers lists with the signing of the deeds to the six (6) wastewater treatment facilities.

(5) The Purchase Public Service Corporation shall research the title to the six (6) wastewater treatment facilities and shall have their attorney prepare deeds and other documents necessary to convey a clear and unencumbered title to the Purchase Public Service Corporation.

(6) The Public Service Commission agrees to move the Franklin Circuit Court to appoint the Purchase Public Service Corporation as "receiver" for the ten thousand dollars (\$10,000) bond held by the Kentucky Public Service Commission and that the money shall be expended to bring the six (6) wastewater treatment systems into compliance with Kentucky Public Service Commissions and Kentucky Natural Resources and Environmental Protection statutes and regulations.

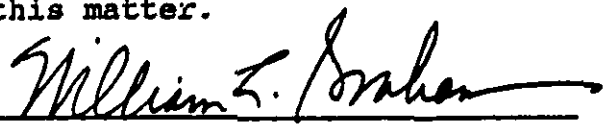
(7) The Public Service Commission agrees to forgo and avoid the collection of penalties in Commissioner's Action No. 90-189, against the Defendants, Cardinal Utilities, Inc., Lorraine P. Kimbrell and Steve Pope, which were ordered by Commissioner's Order therein dated November 12, 1990.

upon the condition that the above named Defendants convey all rights, title and interest to the six (6) wastewater treatment facilities to the Purchase Public Service Corporation free and clear of all liens, debts and encumbrances.

8. Jiffy Mart Fine Foods, Inc., d/b/a Southern Pride Truck Stop, agrees to waive and forego its refund of unauthorized rates from the Defendants, Cardinal Utilities, Inc., Lorraine P. Kimbrell and Steve Pope, as ordered by the Public Service Commission's Order dated November 12, 1990, in Commissioner's Action No. 90-189.

The Purchase Public Service Corporation agrees to accept title to the six (6) wastewater treatment facilities free and clear of all liens, debts and encumbrances. The Purchase Public Service Corporation agrees to accept the six (6) wastewater treatment facilities in their present condition, subject to being appointed receiver by the Franklin Circuit Court for the ten thousand dollars (\$10,000) bond in the hands of the Public Service Commission.

This agreement shall have no force or effect unless signed by all parties involved in this matter.

  
HON. WILLIAM GRAHAM, JUDGE  
FRANKLIN CIRCUIT COURT

HAVE SEEN AND AGREED TO:

BY:

Steve Pope  
CARDINAL UTILITIES, INC.

HAVE SEEN AND AGREED TO:

Jim McCall  
PURCHASE AREA DEVELOPMENT DISTRICT

Lorraine P. Kimbrell  
LORRAINE P. KIMBRELL

Kathleen B. Downum  
PUBLIC SERVICE COMMISSION

Steve Pope  
STEVE POPE

Charles W. Kurtz  
NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET

BY:

Joe M. Boy  
JIFFY MART FINE FOODS, INC.  
d/b/a SOUTHERN PRIDE TRUCK STOP